

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title : Outage-Less Database Change Operation

Inventors: Christopher Parker and Donald Black

Serial No : 10/618,208

Docket : 149-0104US

Customer : 29855

(02-015-US)

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Filed Electronically
via USPTO EFS
on 19 January 2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

This is a Pre-Appeal Brief Request for Review as provided by the "New Pre-Appeal Brief Conference Pilot Program" outlined in the Official Gazette Dated 12 July 2005. This Request is being filed concurrently with a Notice of Appeal. Reconsideration of the pending claims 1-38 in the above-identified application is respectfully requested based on the following remarks.

Assignee contends that the Examiner has made a clear error in rejecting claims 1-38 under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 6,070,170 to Friske et al. ("Friske") in view of U.S. Patent application publication 2003/0135378 to Marshall et al. ("Marshall"). Final Office Action dated 20 October 2006 at page 2; Office Action dated 23 May 2006 at pages 2-3.

1. U.S. Patent 6,070,170 to Friske

Assignee has previously shown that Friske is directed solely to database reorganization techniques. Office Action dated 18 July 2006 at page 11, numbered paragraph 1. As described by Friske, "[o]ne problem ... [in large databases] is the physical location of the leaf pages often becomes quite scattered ... [resulting] ... in

reduced performance.” Friske at 1:63-2:3.¹ To overcome this scattering effect, the data within the database “need to be reorganized periodically so that the logical and physical ordering between leaf pages and data pages better correspond.” Friske at 2:5-8.

To support this aspect of his rejection, the Examiner alleges that “Frisk discloses determining one or more portions of a target database that will be affected by the change command (See column 6, lines 5-9).” Final Office Action dated 20 October 2006 at page 2, bottom 2 lines. Here, however, Friske is unmistakably directed to receiving an unload command to unload data. As Friske teaches, “unloading a data set refers to *copying a data set* to the flat files 124 that contains a copy of the target data records.” Friske at 6:5-11 (emphasis added). Copying data from a database does not alter the database’s structure. Thus, an unload command has absolutely no bearing or relevance on the claimed act of “receiving a database change command to *alter the structure of a target*” as recited in independent claims 1, 13 and 25. Reply to Office Action dated 18 July 2006 at pages 2 (independent claim 1), 4 (independent claim 13) and 7 (independent claim 25). Thus, *Frisk discloses operations that manipulate or change data within a database and not at all to making changes in the database’s structure.*

2. U.S. Patent Application Publication 2003/0135478 to Marshall

Assignee has also shown that Marshall is directed solely to database reorganization techniques. Office Action dated 18 July 2006 at page 11, numbered paragraph 2. Virtually identical in nature to Friske, Marshall discloses that “[w]hen a transaction is performed such that *data* is added, updated and/or deleted from the database, the *data* may become disorganized or fragmented. When this occurs, response time to database queries can be compromised.” Marshall at [0008] (emphasis added). To address this problem, Marshall teaches a “system and method that allows reorganization of databases ... while allowing read and update activity to continue.” Marshall at [0033]; *see also* Abstract, [0011] at first 11 lines, [0012] at first 11 lines, and [0013] at first 12 lines.

1 As used herein, the notation A:B-C means column A, lines B to C and A:B-C:D means column A, line B to column C, line D.

To support this aspect of his rejection, the Examiner alleges that Marshal discloses "receiving a database change command ... to alter the structure of a target database (See paragraph 0038)." Final Office Action dated 20 October 2006 at page 3 (first complete paragraph); Office Action dated 23 May 2006 at page 3 (second complete paragraph). Contrary to the Examiner's allegation, paragraph [0038] is expressly and explicitly directed to a reorganization process – that is, to making changes in the data of a database. As with Friske, Marshall is directed solely to database reorganization techniques. At no time does Marshall disclose or fairly suggest operations directed to changing the structure of a target database.

3. Analysis

Neither Friske or Marshall teach, describe or fairly suggest any operation that changes the *structure* of a target database. Both references are limited by their explicit disclosure and the type of problem they address (data fragmentation in databases), to the reorganization of data within a database. Thus, Friske and Marshall alone and together fail to teach each and every claimed element. As a result, the Examiner has failed to make a *prima facie* case of obviousness. M.P.E.P. 2143.

For at least these reasons, Assignee contends that the Examiner has made a clear error in rejecting claims 1-38 for obviousness, and Assignee respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(A).

To facilitate the resolution of any issues or questions presented by this paper, Assignee respectfully requests that the undersigned be directly contacted by phone to further the discussion, reconsideration, and allowance of the claims.

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